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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,749	12/11/2003	Matthew Ciesicki	MELO-01000US0	8408
28554	7590	03/03/2006	EXAMINER	
VIERRA MAGEN MARCUS & DENIRO LLP 575 MARKET STREET SUITE 2500 SAN FRANCISCO, CA 94105			SHAH, AMEE A	
			ART UNIT	PAPER NUMBER

3625

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/733,749

Applicant(s)

CIESICKI, MATTHEW

Examiner

Amea A. Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-16 are pending in this action.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) and 37 CFR 1.84(p)(5) because: (1) reference character “226” has been used to designate both a personal computer and a user interface (page 9); (2) they do not include the reference sign “230” mentioned in the description (page 9); (3) reference character “228” has been used to designate both a user interface (page 9) and memory storage (Fig. 4); (4) they contain handwritten text that is illegible (Fig. 1) and will not reproduce properly. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Examiner Note***

Examiner cites particular pages, columns, paragraphs and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified

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citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1–16 are rejected under 35 U.S.C. 102(e) as being anticipated by Fiala et al., U.S. Pat. App. Pub. No. 2004/0139318 A1 (hereinafter referred to as “Fiala et al.”).**

Referring to claim 1. Fiala et al. discloses a method for creating and associating personalized audio messages with remotely purchased articles, comprising the steps of:

(a) receiving an order message including first information relating to the purchaser, the purchased article and the merchant from whom the article was purchased (Fig. 18 and pages 5-7, ¶¶ 0044 and 0048 – note the content management and delivery system receives the order message from the purchase management server, and this message includes information which can relate to the purchaser, the purchased article and the merchant);

(b) sending a PIN message assigning an identification number to the purchaser (Fig. 18 and pages 1, 3 and 5, ¶¶0020, 0041 and 0044 – note the identification number is the PIN);

(c) receiving contact from the purchaser to allow recording of the personalized audio message to be associated with the object (Fig. 18 and page 5, ¶0044 – note the receipt of contact is the customer accessing the customization system);

(d) forwarding the personalized audio message to a loader station where the personalized audio message may be downloaded to a sound module, the sound module to be placed with the purchased article (Fig. 18 and page 5, ¶0044 – note the loader station is the content management and delivery system); and

(e) forwarding an identifier to a location associated with the loader station allowing the personalized audio message to be associated with the article (Page 5, ¶0044 – note the identifier is the PIN).

Referring to claims 2 and 3. Fiala et al. further discloses a method for creating and associating personalized audio messages as recited in claim 1, wherein said step (c) of receiving contact from the purchaser comprises contact via the Internet or telephone (pages 5-7, ¶¶0044, 0048 and 0054).

Referring to claim 4. Fiala et al. also discloses a method for creating and associating personalized audio messages as recited in claim 1, further comprising a step (f) of providing security protocols where purchaser is required to enter the identification number received in said step (b) (pages 5 and 8, ¶¶0044 and 0060 – note the identification number is the PIN).

Referring to claim 5. Fiala et al. further discloses a method for creating and associating personalized audio messages as recited in claim 1, wherein the order message is received from the merchant from whom the article was purchased (pages 5-6, ¶¶0044 and 0046 – note the merchant is the retailer).

Referring to claim 6. Fiala et al. further discloses a method for creating and associating personalized audio messages as recited in claim 1, wherein said step (b) of sending a PIN message comprises sending the PIN message to the purchaser (pages 1 and 5, ¶¶0020 and 0044).

Referring to claim 7. Fiala et al. further discloses a method for creating and associating personalized audio messages as recited in claim 1, wherein said step (b) of sending a PIN message comprises sending the PIN message to the merchant (page 5, ¶0044).

Referring to claim 8. Fiala et al. further discloses a method for creating and associating personalized audio messages as recited in claim 1, further comprising a step (g) of storing the personalized audio message after receiving said contact in said step (c) (pages 6 and 8, ¶¶0045 and 0059 – note the storing can be to a personal computer or to storage on the content management and delivery system).

Referring to claim 9. Fiala et al. discloses a method for creating and associating personalized audio messages for articles purchased remotely from a merchant, comprising the steps of:

(a) receiving an order message from a first location associated with the merchant, the order message including first information relating to the purchaser, the purchased article and the merchant from whom the article was purchased (Fig. 18 and pages 4-7, ¶¶0043, 0044 and 0048 – note the content management and delivery system receives the order message, which includes information which can relates to the purchaser, the purchased article and the merchant, from the purchase management server and the first location is the point of sale);

(b) sending a PIN message assigning an identification number to the purchaser (Fig. 18 and pages 1, 3 and 5, ¶¶0020, 0041 and 0044 – note the identification number is the PIN);

(c) receiving contact from the purchaser to allow recording of the personalized audio message to be associated with the object (Fig. 18 and page 5, ¶0044 – note the receipt of contact is the customer accessing the customization system);

(d) forwarding the personalized audio message to a loader station at a second location associated with the merchant where the personalized audio message may be downloaded to a sound module, the sound module to be placed with the purchased article (Fig. 18 and page 5, ¶0044 – note the loader station is the content management and delivery system which is connected via a network and can be at a second location); and

(e) forwarding an identifier to the second location allowing the personalized audio message to be associated with the article (page 5, ¶0044 – note the identifier is the PIN).

Referring to claims 10-16. All of the limitations in method claims 10-16 are closely parallel to the limitations of method claims 2-8, respectively, analyzed above and are rejected on the same bases.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(1) Simpson, U.S. Pat. Nos. 5,954,194 and 6,453,300 B2, discloses methods and system for enabling a first person to purchase and product a customized gift for another including generating a customization code, including music, video or text with the gift, and ordering over the Internet (see entire documents).

(2) Cook, U.S. Pat. No. 6,496,744 B1, discloses a system for selling, manufacturing and distributing custom digital data products from retail stores, over the Internet, over the telephone, or by electronic means (see entire document).

(3) Tolkowsky et al., U.S. Pat. App. Pub. No. 2002/0194092 A1, discloses a method and system for selling items with customized visual and audio data, including music, pictures, text, etc. (see, e.g., pages 2-5).

(4) Everitt, Lisa Greim, "Blue Mountain Personalizes Cards With Greetings In Sender's Own Voice," Denver Rocky Mountain News, Denver, CO, Aug. 18, 1999, pg. 4.B., discloses a company that allows customers to record their own greetings for cards, including receiving an order, receiving a code, making contact to allow a recording, encoding the message/audio file and delivering the card, and which can also be used to reject claims 1, 3, 4, 8, 9, 11, 12 and 16.



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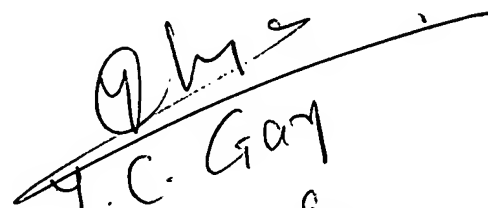
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn W. Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAS

February 28, 2006

  
J.C. Gary  
Primary Ex.